

# SENATE RECORD VOTE ANALYSIS

105th Congress  
2nd Session

Vote No. 135

May 13, 1998, 6:30 pm  
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## SECURITIES LITIGATION UNIFORM STANDARDS/Final Passage

**SUBJECT:** Securities Litigation Uniform Standards Act of 1998 . . . S. 1260. Final passage, as amended.

**ACTION: BILL PASSED, 79-21**

**SYNOPSIS:** As passed, S. 1260, the Securities Litigation Uniform Standards Act of 1998, will establish Federal jurisdiction for most private class action lawsuits involving nationally traded securities in order to stop plaintiff lawyers from circumventing existing Federal law. In 1995, Congress enacted the Private Securities Litigation Reform Act over President Clinton's veto (see 104th Congress, 1st session, vote No. 612). This bill will prevent lawyers from circumventing the provisions of that Act by filing unjust lawsuits against nationally traded securities in State courts instead of in Federal courts. Specific provisions are noted below.

- The term "class action" will be defined to include lawsuits by private parties that are brought predominately to recover damages for alleged common injuries to 50 or more named or unnamed parties, and to include so-called "mass action" lawsuits, which will be defined as groups of lawsuits that are joined, consolidated, or otherwise considered as a single action to represent 50 or more parties. The term will not include derivative actions brought by one or more shareholders on behalf of a corporation. A corporation, investment company, pension plan, partnership, or other entity will be treated as 1 party to a suit, but only if it is not established for the purpose of participating in the suit.

- Class action suits in State courts will not be maintained by any private party alleging an untrue statement or omission of a material fact in connection with the purchase or sale of a nationally traded security, or alleging that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a nationally traded security. If any such suits are brought, they will be removable to Federal district court and subject to Federal securities litigation law.

- Exceptions: State and local governments, their pension plans, State securities commissions, and shareholder-initiated litigation based on a State's laws regarding a fiduciary duty of disclosure in connection with certain corporate actions will not be covered.

(See other side)

YEAS (79)			NAYS (21)		NOT VOTING (0)	
Republicans (53 or 96%)		Democrats (26 or 58%)	Republicans (2 or 4%)	Democrats (19 or 42%)	Republicans (0)	Democrats (0)
Abraham	Helms	Baucus	McCain	Akaka		
Allard	Hutchinson	Bingaman	Shelby	Biden		
Ashcroft	Hutchison	Boxer		Bryan		
Bennett	Inhofe	Breaux		Bumpers		
Bond	Jeffords	Daschle		Byrd		
Brownback	Kempthorne	Dodd		Cleland		
Burns	Kyl	Feinstein		Conrad		
Campbell	Lott	Ford		Dorgan		
Chafee	Lugar	Graham		Durbin		
Coats	Mack	Harkin		Feingold		
Cochran	McConnell	Hollings		Glenn		
Collins	Murkowski	Kennedy		Inouye		
Coverdell	Nickles	Kerrey		Johnson		
Craig	Roberts	Kerry		Lautenberg		
D'Amato	Roth	Kohl		Levin		
DeWine	Santorum	Landrieu		Moynihan		
Domenici	Sessions	Leahy		Sarbanes		
Enzi	Smith, Bob	Lieberman		Torricelli		
Faircloth	Smith, Gordon	Mikulski		Wellstone		
Frist	Snowe	Moseley-Braun				
Gorton	Specter	Murray				
Gramm	Stevens	Reed				
Grams	Thomas	Reid				
Grassley	Thompson	Robb				
Gregg	Thurmond	Rockefeller				
Hagel	Warner	Wyden				
Hatch						

### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

**Those favoring** final passage contended:

Argument 1:

This bill serves a very narrow purpose. In late 1995, a law was enacted to prevent unjust securities litigation class action suits that benefitted no one other than the sleazy lawyers who filed the suits. In oversight hearings on the implementation of that law, we discovered that the lawyers who had developed a disreputable trade from pursuing such suits had simply begun to ply their trade in State courts. From 1992 through 1994, there were only 6 such class action cases filed in the entire United States in State courts. Since enactment of the reform law, the number of such suits has increased by more than 1,000 percent. This narrowly drafted bill will close that loophole. It has been drafted with the help of the Securities and Exchange Commission, and it has the support of the Clinton Administration (which opposed the original reform bill). The Administration's main request is only that Members affirm that the Reform Act of 1995 did not alter the scienter standard on recklessness for pleadings. We have no objections to making that affirmation, because it did not. This bill will provide for uniformity--all class action suits on securities will have to go through the Federal courts. A company should not have to face 51 separate bodies of court law, one for the Federal Government and one for each of the States. That type of system would put a huge burden on commerce. Though a few people may try to argue that it is a States' rights issue to allow a State to decide its own tort laws, the consensus opinion is that this is a commerce issue, and Congress has the clear constitutional responsibility to regulate commerce. A company should not have to face a maze of 51 separate tort systems, each of which could potentially bankrupt it. We are therefore pleased to vote in favor of final passage.

Argument 2:

We opposed the Securities Litigation Reform Act when it passed last Congress, but we recognize that a uniform standard should apply in Federal and State courts. Therefore, we support this bill.

**Those opposing** final passage contended:

We oppose this bill for three reasons. First, there is insufficient evidence that it is necessary. We concede that the number of State suits increased substantially the year after the passage of the reform bill in 1995, but we add that in the second year the number of State suits fell markedly. At this point, it is too early to tell if a problem exists. Second, this bill will overreact to this speculative problem, and will deny individual investors their right to sue in State court. Each State has its own particular approach to protecting investors; some States have more protective laws than do others. We support those differences; it should be up to the citizens of each State to determine the State laws under which they wish to live. This bill, though, will trammel State laws, both